

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

1) **FAO No. 7587 of 2016 (O & M)**
Date of Decision:-08.2.2017

National Insurance Company Ltd.

...Appellant

Versus

Amarjit Kaur and others

...Respondents

2) **FAO No. 7589 of 2016 (O & M)**

National Insurance Company Ltd.

...Appellant

Versus

Baljinder Kaur and others

...Respondents

3) **FAO No. 7752 of 2016 (O & M)**

National Insurance Company Ltd.

...Appellant

Versus

Harwinder Kaur and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Satpal Dhamija, Advocate for
Mr. B.R. Madan, Advocate
for the appellant.

HARI PAL VERMA J.**C.M. No.25757-CII of 2016**

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 169 days in filing the appeal.

The MACT, Ludhiana has pronounced the award on 23.2.2016, whereas the application for supply of certified copy of the orders was moved on 24.2.2016. The certified copy of the order was prepared on 3.3.2016, and the same was received on 9.3.2016. The limitation to file the appeal was 90 days, but it could not be filed within the prescribed period of limitation for the reason explained in the application.

Learned counsel for the applicant has argued that the certified copy of the order was made available in the office on 9.3.2016. It was sent for the opinion to the concerned Divisional office at Ludhiana with recommendations to file the appeal. Accordingly, the file was sent to the Regional Office and was dealt with in the Regional Office, at Chandigarh. It is further submitted that earlier two Regional Offices were operating for Punjab and Haryana separately at Chandigarh, but in the new financial year i.e. 2016, both the Regional offices have been merged and created hub to deal with the legal cases for the entire region of Punjab and Haryana. After this decision, legal files from the Regional Office of Haryana region were shifted to the Regional Office of Punjab but due to this exercise, files of the

present cases as well as some other files were got mixed up with the files of Haryana region, which were shifted to the building of Regional Office of Punjab region. Till the time the files of the present cases could be traced out, the limitation period was expired and in this manner, the delay of 169 days has been occurred.

I have heard learned counsel for the applicant.

For the reasons stated in the application that earlier there were two regional offices operating for Punjab and Haryana separately, and thereafter, the authority has taken the decision to club both the regional offices, this Court finds that there are sufficient reasons to condone the delay in filing the appeal. Accordingly, the application is allowed and the delay of 169 days in filing the appeal is condoned.

FAO No.7587 of 2016

Since all these three appeals are arising out of the same accident, the same are being taken up altogether and this common order shall dispose of all the three aforesaid appeals. For the sake of brevity, the facts are being taken up from FAO No.7587 of 2016.

The respondents-claimants have filed the claim petition under Section 166 of the Motor Vehicle Act, 1988 for grant of compensation on account of death of Avtar Singh @ Tari son of Darshan Singh in a motor vehicle accident. The deceased Avtar Singh @ Tari was 35 years of age and was doing the work of Mason. His monthly income was of Rs.8000/-. The claimants were dependent on the income of the deceased. On 31.7.2014, deceased Avtar Singh @ Tari along with Chamkaur Singh,

Hardeep Singh, Shadi Singh etc. were going from their Village Nanakpur Jagera to Mata Naina Devi in a tempo bearing registration No.PB-10EG-2866, which was driven by Mohan Singh. At about 11.30 PM when they reached in the area of Village Sama Nangal, Police Station Kiratpur Sahib, one truck bearing registration No. HP-12D-9961, which was driven in rash and negligent manner by respondent No.1-Makhan Singh, came from behind and struck against the tempo, in which deceased Avtar singh @ Tari and others were travelling. Due to this accident, Avtar singh @ Tari, Hardeep Singh, Chamkaur Singh, Shadi Singh and other occupants of the tempo sustained injuries. They were brought to the Civil Hospital, Ropar, where, Avtar singh @ Tari died. Accordingly, FIR No.83 dated 1.8.2014 was registered at Police Station Kiratpur Sahib against the driver of the truck for causing the said accident.

Upon notice, respondents appeared and filed written statement taking preliminary objections that the claim petition is not maintainable and at the time of alleged accident, the driver of the vehicle was not holding an effective valid licence. It was denied that the truck bearing No. HP-12D-9961 was involved in any accident with the tempo No.PB-10EG-2866 on 31.7.2014.

From the pleadings of the parties, the Tribunal has framed the issues, out of which, issue No.1 read as under :-

- “1. Whether Avtar singh @ Tari died in a motor vehicle accident, which was caused by respondent No.1, while driving truck No.HP-12D-9961 in rash and negligent manner on 31.7.2014 in the area of village Sama Nangal,

P.S. Kiratpur Sahib ?OPP

2. xxx xxx
3. xxx xxx
4. xxx xxx
5. xxx xxx”

On the basis of evidence so adduced, the learned MACT allowed the claim petition and passed an award of Rs.6,01,000/- in favour of the claimants and against the appellant with interest @ 6% per annum on the awarded amount from the date of petition till its realization. The said award has been challenged through the present appeal.

Learned counsel for the appellant-insurance company has argued that the present is a case of contributory negligence as the vehicle, in which the deceased was travelling, was not meant for passengers, rather, the same was used in violation of the terms and conditions of the insurance policy. The compensation awarded is on higher side. PW2 Dharam Pal Singh, who has admitted in his cross-examination that total 12-13 persons were travelling in the Tempo (Chhota Hathi), which is goods carrying vehicle. The vehicle, in which injured and deceased were travelling, was not meant to be used for carrying passengers. Therefore, it cannot be said that the driver and owner of the tempo were not at fault rather it is because of carrying the passengers, the accident has occurred. The driver and owner of the said tempo were responsible for the death of the deceased Avtar Singh @ Tari as they not only allowed the deceased and injured persons to travel in the goods vehicle but also violated the provisions of the Motor Vehicle Act as well.

I have heard learned counsel for the appellant(s).

To a specific query put to learned counsel for the appellant-insurance company as to whether the insurance company has denied the fact of carrying passengers in tempo, in their pleadings, no satisfactory answer has come forward. Once the insurance company has not pleaded specifically that the vehicle in question was being used in violation of the terms and conditions of the insurance policy or the passengers were being carried in the tempo, this argument is not available to the counsel for the appellant. The Court does not find that there was any contributory negligence on the part of the deceased or the driver, who was carrying passengers in the said tempo.

In this manner, there is no illegality in the awards passed by the Court below, therefore, all the aforesaid three appeals are dismissed.

February 08, 2017
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No